

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO. Z-425840-D4  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: WAYNE McELVIN NAPIER

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1995

WAYNE McELVIN NAPIER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 24 September 1973, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman document upon finding him guilty of misconduct. The specification found proved alleges that while serving as second electrician on board the United States SS CARRIER DOVE under authority of the document above captioned, on or about 25 July 1973, Appellant did wrongfully assault and batter by striking with a beer can the crew pantryman while the vessel was in the port of Durban, Union of South Africa.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of guilty to the charge and specification.

In mitigation, Appellant offered in evidence the testimony of the crew pantryman and his own testimony.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved by plea. The Administrative Law Judge then entered an order revoking all documents, issued to Appellant.

The entire decision was served on 27 September 1973. Appeal was timely filed. A brief in support of appeal was received on 16 January 1974.

FINDINGS OF FACT

On 25 July 1973, Appellant was serving as second electrician on board the United States SS CARRIER DOVE and acting under authority of his document while the ship was in the port of Durban, Union of South Africa when he wrongfully assaulted and battered one Joseph John Taylor, the crew pantryman with a beer by striking him

in the face with it.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant does not contest the finding of guilty to the charge and specification, but only the severity of the order entered. He alleges that it was error not to have found there to be mitigating circumstances in view of testimony presented that Appellant's action was the spontaneous consequence of apprehension and fear of bodily harm. He also contends that the order was excessive in view of Appellant's number of years of service as a working seaman.

APPEARANCE:       Dodd, Hirsch, Meunier, Boudreaux, and Lamy of New Orleans, LA by Daniels S. Foley, Esq.

#### OPINION

Appellant's first contention is predicated upon his own testimony taken in mitigation that at the time he thought he was protecting himself from bodily harm (R-19). There was no other evidence which raises the slightest hint of any provocation by the victim or of any reasonable basis for this belief on behalf of Appellant. The testimony of the victim, called as defense witness, clearly demonstrated that Appellant's apprehension was totally groundless. There was no error by the Administrative Law Judge when he found no relevant mitigating circumstances involved. The fact that Appellant may have intended to strike a person other than the actual victim cannot be seriously considered as a mitigating factor. The attacker must take his victim as he finds him. Mistaken identity does not make the unprovoked attack any the less an assault and battery, nor does it require any lessening of the penalty. So far as the Coast Guard is concerned, a striking of the wrong person is none the less inimical to the general safety of life at sea than the intentional striking of the actually intended victim. The motive and character of the assailant are the same.

As to Appellant's second contention that his long record of a working seaman requires a reduction of the order, it must be pointed out that his long record included some three offenses similar in nature to the present case. Appellant cannot have it both ways, if his record is to be considered at all it must be considered in its entirety. When it is so considered, it establishes a propensity for violence such as to warrant his permanent removal from service on board merchant vessels of the United States.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative character and the order entered is appropriate under all of the surrounding circumstances.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 24 September 1973, is AFFIRMED.

C.R. BENDER  
Admiral, U.S. Coast Guard  
Commandant

Signed at Washington, D.C., this 19th day of March 1974.

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